

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.5229 OF 2021

Kantilal Kisanlal Sacheti ... Petitioner
V/s.
Madhav Vasant Joshi & Anr. ... Respondents

Mr. Arun B. Palekar for the petitioner.

Ms. G.P. Mulekar, APP for respondent no.2/State.

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CORAM : AMIT BORKAR, J.

DATED : DECEMBER 15, 2022

PC.:

- 1.** Heard. **Rule.** Rule is made returnable forthwith.
- 2.** Since the learned Magistrate had not issued process against the accused, respondent no.1 need not be made party in the present writ petition.
- 3.** Respondent no.1 is permitted to be deleted. Amendment to be carried out forthwith.
- 4.** The petitioner is challenging order dated 4th February 2020 passed in Revision Application No.319 of 2018 and order dated 1st April 2019 passed by the learned Magistrate.
- 5.** The controversy involved in this petition is that the petitioner had not paid court fees in a complaint filed under

section 138 of the Negotiable Instruments Act, 1881 along with the complaint. The reason assigned in the application was that on the date of filing of the application, i.e., 9th November 2017 requisite court fee stamps were not available.

6. It is well settled that the payment of court fees is a matter between the complainant and the State. Once the complaint having been filed within the prescribed time, the learned Magistrate ought to have accepted the court fees. It is not in dispute that the petitioner has furnished requisite fee stamps before the learned Magistrate. At page 32 of the petition, the petitioner has annexed challan to show payment of requisite court fees.

7. In that view of the matter, the learned Magistrate shall proceed to consider the complaint on merits in accordance with law.

8. Rule is made absolute in above terms. No costs.

(AMIT BORKAR, J.)